

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BUILDING TRADES UNITED
PENSION TRUST FUND, et al,

Plaintiffs,

v.

Case No. 05-CV-655

PHOENIX CONTRACTORS, INC.,

Defendant.

ORDER

On January 10, 2006, plaintiffs, Building Trades United Pension Trust Fund, et al., filed an expedited motion pursuant to Rule 37 of the Federal Rules of Civil Procedure and Civil L.R. 7.4 and 37.1, for an order compelling defendant, Phoenix Contractors, Inc. ("Phoenix"), to respond to and produce information and documents responsive to Plaintiffs' First Set of Requests to Produce Documents. In their lawsuit alleging that the defendant failed to make payments to plaintiffs' funds in violation of the Employee Retirement Income Security Act (ERISA), the plaintiffs seek information regarding the hours worked by the defendant's employees. The plaintiffs also request that this court award them the reasonable expenses, including attorney's fees, they incurred in preparing the motion to compel.

The plaintiffs' discovery requests were served upon Phoenix on November 2, 2005, giving the defendant until December 3, 2005, to provide its responses and produce the requested documents. On December 9, 2005, the defendant responded to one of the plaintiffs' requests, but the defendant did not respond to a request to produce documents related to the hours worked by the defendant's employees. After several attempts to obtain responses without court action, the plaintiffs have not been able to receive the documents responsive to Plaintiffs' Request No. 2, which states:

All documents, including but not limited to remittance reports, time sheets, UC-101s and all federal and state tax forms, related to all hours worked by Defendant's employees during the time period August 1, 2003 through and including October 31, 2005.

The court concludes the plaintiffs' motion has merit. The defendant was required to serve the plaintiffs with a written response within 30 days after it was served with the discovery request. *See* Fed. R. Civ. P. 34(b). The defendant has failed to comply with this requirement and has failed to respond to the plaintiffs' motion to compel. As such, the court will grant the plaintiffs' motion, and it will compel the defendant to respond to the plaintiffs' First Set of Requests to Produce Documents, specifically, Request No. 2, within five (5) days from the date of this order. *See* Fed. R. Civ. P. 37(a). Additionally, pursuant to Fed. R. Civ. P.

37(a)(4)(A), the court will award the plaintiffs the reasonable expenses, including attorney's fees, they incurred in preparing the motion to compel.

Accordingly,

IT IS ORDERED that the plaintiffs' Rule 7.4 expedited non-dispositive motion to compel (Docket #13) be and the same is hereby GRANTED; and

IT IS FURTHER ORDERED that the defendant must respond to the plaintiffs' First Set of Requests to Produce Documents, specifically, Request No. 2, within five (5) business days from the date of this order.

Dated at Milwaukee, Wisconsin, this 17th day of March, 2006.

BY THE COURT:

s/J.P. Stadtmueller
J.P. STADTMUELLER
U.S. District Judge